

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
PALM SPRINGS-SOUTH COAST FIELD OFFICE

CATEGORICAL EXCLUSION REVIEW AND DECISION RECORD

CX Number: CA-660-05-11

Name of Proposed Action: Pratt Apiaries, 2920 Permit

Legal Description: Site #4: T5S, R22E, Sec. 22 N $\frac{1}{2}$ N $\frac{1}{2}$
Site #6 T5S, R22E, Sec. 5 SE $\frac{1}{4}$
Site #8 T4S, R21E, Sec. 23 SE $\frac{1}{4}$
Site #9 T4S, R21E, Sec. 15 NW $\frac{1}{4}$
Site #10 T4S, R21E, Sec. 4 SE $\frac{1}{4}$ NW $\frac{1}{4}$
Site #11 T3S, R21E, Sec. 32 NW $\frac{1}{4}$
Site #A T4S, R21E, Sec. 25 N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$,
S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$
Site #B T4S, R21E, Sec. 10 N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$,
S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$

Land Use Plan Conformance: In compliance with 43CFR1610.5-3 and BLM MS1617.3, the proposed action is in conformance with the California Desert Conservation Area Plan (1980 as amended) and the Northern and Eastern Colorado Desert Plan Amendment (NECO), 2002. The lands listed above are designated Class L managed to protect sensitive, natural, scenic, ecological, and cultural resource values. Public lands designated as Class L are managed to provide for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive value are not significantly diminished. The proposed action is outside of established Desert Wildlife Management Areas (DWMA) and conforms to the Motorized Vehicle Access element of the NECO plan.

Description of Proposed Action: Pratt Apiaries has submitted a request to renew their existing apiary permit CACA 43625 for the above locations. This is a Temporary Use Permit, limited to three (3) years under the 2900 regulations; it will be renewed under case number CACA-45645. The permit will be for three years from January 1, 2005 through December 31, 2008.

There will be approximately 4800 hives spread out amongst the eight (8) sites. The sites are located along the Midland-Rice Road, and would be placed no further than 300 feet from the road. The hives are trucked in on a self loading flat bed truck, along with 55gal barrels of water. The standard apiary stipulations and tortoise stipulations from the previous permits still apply (attached).

Categorical Exclusion Reference: 516 DM 6, Appendix 5.4 E (9) Renewals and assignments of leases, permits or rights-of-way where no additional rights are conveyed beyond those granted by the original authorization.

Screening for Exceptions: The following exceptions apply to individual actions within categorical exclusions (516 DM, Appendix 2). The preparer and/or indicated specialist must verify that the Proposed Action does not:

2.1	Have significant adverse effects of public health or safety?	None
2.2	Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farm lands, wet lands, flood plains, or ecologically significant or critical areas, including those listed on the Department's National Register of National Landmarks?	None
2.3	Have highly controversial environmental effects?	None
2.4	Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?	None
2.5	Establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects?	None
2.6	Be directly related to other actions with individually insignificant but cumulatively significant environmental effects?	None
2.7	Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places?	None
2.8	Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species or have adverse effects on designated critical habitat for these species?	None
2.9	Require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act?	None
2.10	Threaten to violate a Federal, State, or local or tribal law or requirement imposed for the protection of the environment?	None

Prepared by: Della Asuagbor

Reviewed by: _____
Environmental Coordinator

DECISION: It is my decision to approve the proposed action as described in Categorical

Exclusion (CX) number CA-660-05-12. I find this action conforms with 516 Departmental Manual (DM) 2 and DM 6 with no exceptions. I further find this action in conformance with applicable land use plans and that it will not cause unnecessary or undue degradation. Conditions of approval, if attached, are incorporated by reference as the decision of the Bureau of Land Management regarding this action. A copy of this Decision Record and attendant conditions of approval shall be in the possession of the on-site operator during all undertakings approved herein.

APPEALS:

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations at Title 43 of the Code of Federal Regulations (CFR), Part 4, and the information provided in Form 1842-1 (enclosed). If an appeal is taken, your notice of appeal must be filed in the Palm Springs-South Coast Field Office, Bureau of Land Management, U.S. Department of the Interior, 690 West Garnet Avenue, P.O. Box 581260, North Palm Springs, California 92258, within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, pursuant to Title 43 of the Code of Federal Regulations, Part 4, Subpart E, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) the relative harm to the parties if the stay is granted or denied,
- (2) the likelihood of the appellant's success on the merits,
- (3) the likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) whether the public interest favors granting the stay.

An appeal from this decision may be taken to the State Director, California State Office, Bureau of Land Management in accordance with the provisions at Title 43 Code of Federal Regulations 3160. If an appeal is taken, the notice of appeal must be filed with the Palm Springs-South Coast Field Office, Bureau of Land Management, U.S. Department of the Interior, 690 West Garnet Avenue, P.O. Box 581260, North Palm Springs, California 92258 within thirty (30) days from receipt of this decision. Do not send the notice of appeal to the State Director. The appeal and the case history will be sent to the State Director by the Field Office. The appeal to the State Director must contain: (1) the name and mailing address of the appellant; (2) where applicable, the name of the mining claim(s) and serial number(s) assigned to the mining claim(s) recorded pursuant to Part 3833 of this title which are subject to appeal; and (3) a statement of reasons for appeal and any arguments the appellant wishes to present which would justify reversal or

modification of the decision. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

During the appeal to the State Director, all decisions from which the appeal is taken shall be effective during the pendency of the appeal.

If no appeal is taken, this decision constitutes final administrative action of this Department as it affects the mining claim(s). No appeal, protest or petition for reconsideration will be entertained from this decision after the appeal period has expired.

APPROVED BY:

Field Manager
Palm Springs-South Coast Field Office
Bureau of Land Management
U.S. Department of the Interior
690 W. Garnet Avenue; P.O. Box 581260
North Palm Springs, CA 92258-1260

Date

Exhibit A

Stipulations Apiary Permit

1. Vehicle access to the permitted area shall be restricted to designated open access roads and trails. No off-road vehicles use is permitted. Hives are to be no further than 300 feet from the access road.
2. Surface disturbance activity of any kind is not permitted.
3. Hives must be 300 feet from road.
4. Hives must be 300 feet from a residence.
5. There must be a permanent water supply at site (such as a 55 gallon barrel).
6. All hives must be marked with the permittee's name, phone number and apiary number.
7. A copy of the permit must be posted at the Apiary site.
8. The permittee is required to follow all applicable Federal, State, County and Local ordinances.

The following measures from the Biological Opinion for Small Projects affecting Tortoise Habitat (BO-1-8-97-F-17) shall be implemented:

- a. The project proponent shall designate a field contact representative (FCR) who will be responsible for overseeing compliance with protective stipulations for the desert tortoise and for coordination on compliance with the BLM. The FCR must be on-site during all project activities. The FCR shall have the authority to halt all project activities that are in violation of the stipulations. The FCR shall have a copy of all stipulations when work is being conducted on the site. The FCR may be a crew chief or field supervisor, a project manager, any other employee of the project proponent, or a contracted biologist.
- b. All employees of the project proponent who work on-site shall participate in a tortoise education program prior to initiation of field activities. The project proponent is responsible for ensuring that the education program is developed and presented prior to conducting activities. New employees shall receive formal, approved training prior to working on-site. The employee education program must be received, reviewed and approved by the BLM Field Office at least 15 days prior to the presentation of the program. The program may consist of a class presented by a qualified biologist (BLM or contracted) or a video. Wallet-sized cards or a one-page handout with important information for workers to carry are recommended. The program shall cover the following topics at a minimum:
 - distribution of the desert tortoise,
 - general behavior and ecology of the tortoise,
 - sensitivity to human activities,

- legal protection,
- penalties for violations of State or Federal laws,
- reporting requirements, and
- project protective mitigation measures.

- c. Only biologists authorized by the USFWS, CDFG, and the BLM shall handle desert tortoises. The BLM or project proponent shall submit the name(s) of proposed authorized biologist(s) to the USFWS for review and approval at least 15 days prior to the onset of activities. No activities shall begin until an authorized biologist is approved. Authorization for handling shall be granted under the auspices of the Section 7 consultation.
- d. The area of disturbance shall be confined to the smallest practical area, considering topography, placement of facilities, location of burrows, public health and safety, and other limiting factors. Work area boundaries shall be delineated with flagging or other marking to minimize surface disturbance associated with vehicle straying. Special habitat features, such as burrows, identified by the qualified biologist shall be avoided to the extent possible. To the extent possible, previously disturbed areas within the project site shall be utilized for the stockpiling of excavated materials, storage of equipment, location of office trailers and parking of vehicles. The qualified biologist, in consultation with the project proponent shall ensure compliance with this measure.
- e. Where practical, no access road shall be bladed to the project site. Cross-country access shall be the standard for temporary activities. For development activities, a short driveway (no more than 0.3 miles) from the nearest access road may be constructed if necessary. To the extent possible, access to the project site shall be restricted to designated "open" routes of travel. A qualified biologist shall select and flag the access route, whether cross-country or bladed, to avoid burrows and to minimize disturbance of vegetation. All constructed access roads are to be considered temporary; after project abandonment (or completion if a short-term activity), the route shall be rehabilitated using ripping, raking, and other accepted techniques.

Except when absolutely required by the project and as explicitly stated in the project permit, cross-country vehicle use by employees is prohibited during work and non-work hours.

- i. Desert tortoises may be handled only by the authorized biologist and only when necessary. In handling desert tortoises, the authorized biologist shall follow the techniques for handling desert tortoises in "Guidelines for Handling Desert Tortoises during Construction Projects" (Desert Tortoise Council 1996).
- j. The authorized biologist shall maintain a record of all desert tortoises handled. This information shall include for each tortoise:
 1. the locations (narrative and maps) and dates of observations;
 2. general condition and health, including injuries and state of healing and whether animals voided their bladders;
 3. location moved from and location moved to;
 4. diagnostic markings (i.e., identification numbers or marked lateral scutes);

5. slide photograph of each handled desert tortoise as described in a previous measure.
- k. No later than 90 days after completion of construction or termination of activities, the FCR and authorized biologist shall prepare a report for the BLM. The report shall document the effectiveness and practicality of the mitigation measures, the number of tortoises excavated from burrows, the number of tortoises moved from the site, the number of tortoises killed or injured, and the specific information for each tortoise as described previously. The report may make recommendations for modifying the stipulations to enhance tortoise protection or to make it more workable. The report shall provide an estimate of the actual acreage disturbed by various aspects of the operation.
- l. Upon locating a dead or injured tortoise, the project proponent or agent is to notify the BLM Field Office. The BLM must then notify the appropriate field office (Carlsbad or Ventura) of the USFWS by telephone within three days of the finding. Written notification must be made within five days of the finding, both to the appropriate USFWS field office and to the USFWS Division of Law Enforcement in Torrance. The information provided must include the date and time of the finding or incident (if known), location of the carcass or injured animal, a photograph, cause of death, if known, and other pertinent information.

An injured animal shall be transported to a qualified veterinarian for treatment at the expense of the project proponent. If an injured animal recovers, the appropriate field office of USFWS should be contacted for final disposition of the animal.

The BLM shall endeavor to place the remains of intact tortoise carcasses with educational or research institutions holding the appropriate State and Federal permits per their instructions. If such institutions are not available or the animal's remains are in poor condition, the information noted above shall be obtained and the carcass left in place. If left in place and sufficient pieces are available, the BLM (or its agent) shall attempt to mark the carcass to ensure that it is not reported again. Arrangements for disposition to a museum shall be made prior to removal of the carcass from the field.

- m. Except on county-maintained roads, vehicle speeds shall not exceed 20 miles per hour through desert tortoise habitat.
- n. Workers shall inspect for tortoises under a vehicle prior to moving it. If a tortoise is present, the worker shall carefully move the vehicle only when necessary and when the tortoise would not be injured by moving the vehicle or shall wait for the tortoise to move out from under the vehicle.
- o. No dogs shall be allowed at a work site in desert tortoise habitat.
- p. All trash and food items shall be promptly contained within closed, raven-proof containers. These shall be regularly removed from the project site to reduce the attractiveness of the area to ravens and other tortoise predators.